Deliver to: Ronda Zivalich

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Why Clients Should be Extra Frugal with Their Special Needs Children

Special children will require special planning.

One of the risks that a family with a special needs child may have is that a well-meaning loved one could accidentally disqualify the child from receiving government benefits.

For example, Joe is 22 years old and suffered a birth defect that left him unable to walk or have full use of his hands. He lives in subsidized housing. He is able to make ends meet.

Sometimes his parents help him with money, but Joe also receives a monthly Supplemental Security Income payment of $800.

Joe's parents created a first party Special Needs Trust (SNT) to provide for his care and needs. Recently Joe's Aunt Mary died. Unbeknownst to Joe's parents, Mary left Joe $60,000.

Her thoughtful gesture ended up creating serious problems for Joe. He suddenly had more than $2,000 in the bank, and as a result he was disqualified from receiving aid.

This is a real problem for a special needs family and it needs vigilant advisors.

Strategies for the Special Needs Family

In this case, there are a number of strategies to help Joe benefit from his Aunt Mary's gift and still keep his aid:

1. The first party Special Needs Trust that Joe's parents created includes a state reimbursement or "payback" provision. Joe can transfer the monetary gift from Aunt Mary into the Trust. Eligibility is undisturbed.

2. Joe can spend all the money before the end of the month in which it was received.

3. Joe can purchase or invest in exempt resources, such as an automobile. If Joe inherits more money, he can buy interest in a residence.

Consider the Consequences of Large Gifts

Had Aunt Mary instead left the money to the SNT created by Joe's parents, there would have been no disruption in or threat to his eligibility for certain services.

Aunt Mary could have also designated different residual beneficiaries than those identified in the SNT prepared by Joe's parents. Arguably, every SNT should include provisions allowing for the establishment of separate accounts.

The trust should also specifically state that no accounts will be mutually maintained by individuals other than the settlers – unless the donor has specifically mandated their inclusion.

It's important that parents let their friends and relatives know about the Special Needs Trust they formed for their special needs child. Parents should also make those loved ones aware that any contributions they wish to make need to go into that Trust. That way the child's access to public benefits won't be jeopardized.

As always, I hope this article has helped you and your clients. If you have a specific case or concern you'd like to discuss, please contact our office.

Keith L. Davis, JD, MBA, LLM (Tax), CPA
Francis P. Brown, JD, MIM, LLM (Tax)
Janine A. Guillen, JD, MBA, RN

523 Park Point Drive, Suite 350
Golden, CO 80401
Phone: 303-670-9855 Fax 303-670-5381